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17 UNITED STATES DISTRICT COURT
18
19 CENTRAL DISTRICT OF CALIFORNIA
20
21 WESTERN DIVISION

22 MICHAEL CAMPOS, THOMAS HESS, Case No. 09-9445
23 and SARA JORDAN, individually and
24 on behalf of others similarly situated;

25 Plaintiffs,

26 v.

27 METABOLIC RESEARCH, INC., a
28 Nevada domestic corporation;
and DOE DEFENDANTS 1-10,
Inclusive,

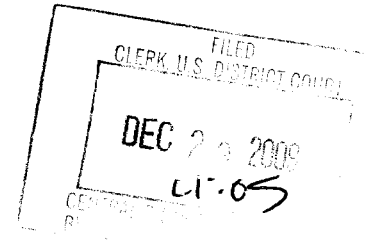
Defendants.

Hon.:
Dept.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Complaint Filed:
Trial Date: None Set



I. INTRODUCTION

This lawsuit is intended to put an end to the ongoing fraud being perpetrated on unwary Californians seeking to improve their appearance by a company that is making outrageous marketing claims to sell truly worthless products. Defendant Metabolic Research, Inc., makes tens of millions of dollars every year by selling Stemulite, a truly worthless product that is the subject of this lawsuit.

As noted in detail below, to say that Metabolic Research, Inc., has a reputation for playing fast and loose with the truth is a dramatic understatement. Metabolic Research, Inc. invents names for its products that are confusingly similar to genuine pharmaceutical companies or products, make wild (and completely false) claims about their effectiveness, and then waits for the money to roll in. To summarize Mark Twain, "they will say anything to sell anything."

Plaintiffs bring this lawsuit to stop Metabolic Research, Inc. from fleecing Californians from millions of dollars and to recover the many millions of dollars that the class members are entitled to have refunded to them.

II. THE PARTIES

1. Plaintiff Sara Jordan ("Jordan") is a citizen of California who maintains her permanent residence in the Central District of California. Plaintiff Sara Jordan has purchased Stemulite in Torrance, California.

2. Plaintiff Thomas Hess ("Hess") is a citizen of California who maintains his permanent residence in the Central District of California. Plaintiff Thomas Hess has purchased Stemulite in Riverside County, California.

3. Plaintiff Michael Campos ("Campos") is a citizen of California who maintains his permanent residence in the Southern District of California. Plaintiff Michael Campos has purchased Stemulite in Pacific Beach, California.

4. Plaintiffs are informed and believe that Defendant Metabolic Research, Inc. ("MRI") is a Nevada corporation with its principal place of business in the state of Nevada. MRI does business in California.

1 5. Plaintiffs are informed and believe that all of the defendants sued herein
2 act and operate as agents and/or alter egos of one another, fail to observe basic
3 corporate formalities, and are engaged in a common scheme to defraud Californians.
4 Specifically, all of the defendants have contacts with California in that they engage in
5 the manufacture and sale of the products described herein and each act and operate as
6 the agents and/or alter egos of one another in connection with sales efforts and
7 schemes in California.

8 6. Plaintiffs do not know the true names or capacities of the persons or
9 entities sued herein as DOES 1 to 50, inclusive, and therefore sue such Defendants by
10 such fictitious names. Plaintiffs are informed and believe and thereon allege that each
11 of the DOE Defendants is in some manner legally responsible for the damages
12 suffered by Plaintiffs and the members of the Stemulite Class (as defined below).
13 Plaintiffs will amend this complaint to set forth the true names and capacities of these
14 Defendants when they have been ascertained, along with appropriate charging
15 allegations, as may be necessary.

16 **III. JURISDICTION AND VENUE**

17 7. This Court has jurisdiction over all causes of action asserted herein under
18 the Class Action Fairness Act ("CAFA"), and for purposes of the claims of Plaintiffs.
19 First, there is complete CAFA diversity of citizenship, and complete diversity of
20 citizenship for all purposes. Specifically, each named Plaintiff herein and all of the
21 members of each of the Stemulite Class described herein are by definition citizens of
22 California. And as set forth above, each Defendant is a citizen of a state or states
23 other than California. Second, the amount in controversy for each class, and for
24 Plaintiffs, exceeds \$10 million. Additionally, Plaintiffs are informed and believe that
25 the value of injunctive relief sought herein would exceed \$10 million.

26 8. Venue is proper in this Court because Plaintiff Jordan and Plaintiff Hess
27 purchased the Stemulite product in this District, because Plaintiff Jordan and Plaintiff
28 Hess live in this District, and because Defendants have received substantial

1 compensation from sales in this District. Specifically, each Defendant knowingly
2 engages in activities directed at consumers in California, and each Defendant obtains
3 substantial benefits from the Defendants' common scheme perpetrated in this District
4 in California.

5 9. Plaintiffs have attached herewith, as Exhibits A, B and C, the
6 declarations of venue required by Civil Code Section 1780(d) of Plaintiffs Jordan,
7 Hess and Campos, respectively.

8 10. Defendants and other out-of-state participants can be brought before this
9 Court pursuant to California's "long-arm" jurisdictional statute.

10 IV. FACTS

11 11. The weight-loss industry is a multi-billion-dollar industry in the United
12 States. Hundreds of new products appear on the market every year, many of them
13 claiming to be a quick and easy solution to the weight loss problem. In an effort to
14 promote real weight loss and to prevent Americans from being defrauded by "miracle
15 pills," the U.S. Food and Drug Administration ("FDA") instructs that "[a]ny claims
16 that you can lose weight effortlessly are false. The only proven way to lose weight is
17 either to reduce the number of calories you eat or to increase the number of calories
18 you burn off through exercise. Most experts recommend a combination of both." A
19 true and correct copy of a brochure published by the FDA, The Facts About Weight
20 Loss Products and Programs, FDA/FTC/NAAG Brochure: 1992, is attached hereto as
21 Exhibit D.

22 A. Manufacturing Defendant - Metabolic Research, Inc.

23 12. Defendant MRI, the manufacturer of Stemulite, plays a particularly
24 egregious role in the weight-loss industry by enveloping itself in pseudo scientific
25 garb and claiming to produce supplements that provide miraculous results.
26 Specifically, Defendant MRI invents names for its products that sound like
27 pharmaceutical companies or products, and then make wild claims for their
28 effectiveness in causing weight loss and fat loss, deep REM sleep, increased muscle

1 gain and endurance, increased wellness or energy or otherwise curing whatever ails
 2 one. Defendant MRI then markets these products at excessive prices in order to prey
 3 upon the acute anxieties of a weight conscious public.

4 **C. The Stemulite Product**

5 13. Stemulite is a dietary supplement manufactured by Defendant MRI and
 6 marketed by Defendants as a weight loss product. Defendants make the following
 7 specific claims for the Stemulite Product:

- 8 a. "People who take Stemulite Experience:
- 9 • Deep REM Sleep
- 10 • Increased Muscle Gain and Endurance
- 11 • Increased Weight Loss and Fat Loss
- 12 • Increased Wellness and Energy." A true and correct copy of
- 13 Defendants' advertising claims on these points is attached hereto
- 14 as Exhibit E.
- 15 b. "Achieve Peak Athletic Performance Naturally with Stemulite all-
- 16 natural Fitness Formula." A true and correct copy of Defendants'
- 17 advertising claims on these points is attached hereto as Exhibit F.
- 18 c. Benefits include: "Complete fitness," "Anti-Aging," "Increased
- 19 Energy," "Strength & Endurance," "Deeper Sleep," "Weight
- 20 Loss", and "Well Being." A true and correct copy of Defendants'
- 21 advertising claims on these points is attached hereto as Exhibit G.
- 22 d. "Use Stemulite's all-natural formula to:
- 23 • Build strength
- 24 • Increase muscle
- 25 • Improve endurance
- 26 • Minimize recovery time
- 27 • Decrease body fat
- 28 • Improve recovery time." A true and correct copy of Defendants'

online claims on these points is attached hereto as Exhibit H.

e. “Stemulite

- Increase Strength
- Increase Muscle
- Increase Energy
- Increase REM Sleep
- Increase Endurance
- Increase Endurance
- Increase Well Being

• Decrease Recovery Time.” A true and correct copy of Defendants’ advertising claims on these points is attached hereto as Exhibit I.

14. Plaintiffs are informed and believed that Defendants’ claims for Stemulite are false and misleading for the following reasons:

- a. Like any other diet supplement, Stemulite cannot reduce caloric intake; individuals may reduce the number of calories ingested by choosing to eat less or to eat healthier foods. No supplement can ever control caloric intake without concomitant individual efforts to eat less or eat healthier foods.
- b. Even if Stemulite could suppress appetite and reduce the number of calories consumed, that decrease would have to be coupled with an increase in physical activity in order to lose weight.
- c. Even if the stimulants in Stemulite increased energy levels (and presumably physical activity), such an increase would be vastly insufficient to produce the drop in weight, fat, and body fat Defendants claim.
- d. Any permanent weight loss program includes a long term change in eating and exercise habits, the very practices Stemulite suggests

1 can be avoided.

2 15. Plaintiffs thus are informed and believe, in summary, that Defendants'
3 claims regarding Stemulite are false because (A) permanent weight loss cannot occur
4 automatically without a change in caloric intake or increased physical activity; (B) a
5 short term decrease in appetite and increase in energy from ingesting stimulants
6 contained in Stemulite does not correspond with the permanent weight loss
7 Defendants promise; and (C) the testing results advertised by Defendants are spurious
8 and of no practical significance.

9 16. On information and belief Defendants knew that Stemulite did not have
10 the properties Defendants claimed, and that it was defective as set forth above, but
11 nevertheless, they manufactured and marketed the product as set forth above.

12 17. Defendants sell Stemulite at prices often exceeding \$59.00 per package
13 based on the preceding false claims. *See* Exhibit J attached hereto. As a result,
14 Defendants have wrongfully made tens of millions of dollars in profits from
15 California consumers.

16 **D. Plaintiffs Purchase Of Defendants Products In Reliance On**
17 **Defendants' Claims**

18 18. Prior to the filing of this action, on numerous occasions since 2009, and
19 continuing through September 2009, Plaintiff Jordan purchased Stemulite in Torrance,
20 California for her own personal use. In so doing, Plaintiff Jordan believed and relied
21 specifically on the representations contained in the marketing materials for the
22 product, which were present at and displayed where she purchased the product. Those
23 representations explicitly state that Stemulite will cause increased strength, muscle,
24 energy, REM sleep, endurance, well being, recovery time, and weight loss. Plaintiff
25 Jordan has consumed Stemulite, but the product has not worked as advertised.
26 Specifically, Plaintiff Jordan has found that she has not lost any weight as a
27 consequence of using the product, and in fact has not lost any weight without
28 changing diet or exercise. Also, she has not experienced deep REM sleep, increased

1 muscle gain and endurance, or increased wellness and energy. Plaintiff Jordan has
2 thus suffered injury and damage because she purchased a product based on false
3 advertising and because the product has not worked as advertised.

4 19. Prior to the filing of this action, on numerous occasions since 2009, and
5 continuing through September 2009, Plaintiff Hess purchased Stemulite from in
6 Riverside County, CA for his own personal use. In so doing, Plaintiff Hess believed
7 and relied specifically on the representations contained in the marketing materials for
8 the product, which were present at and displayed where he purchased the product.
9 Those representations explicitly state that Stemulite will cause increased strength,
10 muscle, energy, REM sleep, endurance, well being, recovery time, and weight loss.
11 Plaintiff Hess has consumed Stemulite, but the product has not worked as advertised.
12 Specifically, Plaintiff Hess has found that he has not lost any weight as a consequence
13 of using the product, and in fact has not lost any weight without changing diet or
14 exercise. Also, he has not experienced deep REM sleep, increased muscle gain and
15 endurance, or increased wellness and energy. Plaintiff Hess has thus suffered injury
16 and damage because he purchased a product based on false advertising and because
17 the product has not worked as advertised.

18 20. Prior to the filing of this action, on numerous occasions since 2009, and
19 continuing through September 2009, Plaintiff Campos purchased Stemulite from in
20 Pacific Beach, California for his own personal use. In so doing, Plaintiff Campos
21 believed and relied specifically on the representations contained in the marketing
22 materials for the product, which were present at and displayed where he purchased the
23 product. Those representations explicitly state that Stemulite will cause increased
24 strength, muscle, energy, REM sleep, endurance, well being, recovery time, and
25 weight loss. Plaintiff Campos has consumed Stemulite, but the product has not
26 worked as advertised. Specifically, Plaintiff Campos has found that he has not lost
27 any weight as a consequence of using the product, and in fact has not lost any weight
28 without changing diet or exercise. Also, he has not experienced deep REM sleep,

1 increased muscle gain and endurance, or increased wellness and energy. Plaintiff
2 Campos has thus suffered injury and damage because he purchased a product based on
3 false advertising and because the product has not worked as advertised.

4 **V. STEMULITE CLASS ACTION ALLEGATIONS**

5 21. Plaintiffs bring this action against Defendants on behalf of all citizens of
6 California only who purchased Stemulite in California within the last 3 years (the
7 “Stemulite Class”). This class action is brought pursuant to Rule 23(b)(1), (b)(2)
8 and(b)(3) of the Federal Rules of Civil Procedure.

9 22. Excluded from the Stemulite Class are governmental entities,
10 Defendants, any entity in which Defendants have a controlling interest, and
11 Defendants' officers, directors, affiliates, legal representatives, employees, co-
12 conspirators, successors, subsidiaries, and assigns. Also excluded from the Stemulite
13 Class are any judge, justice, or judicial officer presiding over this matter and the
14 members of their immediate families and judicial staff.

15 23. The proposed Stemulite Class is so numerous that individual joinder of
16 all its members is impracticable. Due to the nature of the trade and commerce
17 involved, Plaintiffs believe that the total number of Stemulite Class members is at
18 least in the tens of thousands and that members of the Stemulite Class are
19 geographically dispersed across California. While the exact number and identities of
20 the Stemulite Class members are unknown at this time, such information can be
21 ascertained through appropriate investigation and discovery. The disposition of the
22 claims of the Stemulite Class members in a single class action will provide substantial
23 benefits to all parties and to the Court.

24 24. There is a well-defined community of interest in the questions of law and
25 fact involved affecting the Stemulite Class and these common questions predominate
26 over any questions that may affect individual Stemulite Class members. Common
27 questions of fact and law include, but are not limited to, the following:

28 a. Whether Defendants claim or have claimed that “People who take

Stemulite Experience:

- Deep REM Sleep
- Increased Muscle Gain and Endurance
- Increased Weight Loss and Fat Loss
- Increased Wellness and Energy.”

- b. Whether Defendants' claims are accurate;
- c. Whether Defendants falsely represented that Stemulite have characteristics, ingredients, uses, benefits, or quantities which they do not have;
- d. Whether Defendants falsely represented that Stemulite are of a particular standard, quality or grade;
- e. Whether Defendants fraudulently induced customers to purchase Stemulite;
- f. Whether Defendants labeled Stemulite in a way that is misleading in a material respect;
- g. Whether Defendants continued to sell Stemulite after knowing the preceding facts.

25. These common questions of law and fact predominate over questions that may affect individual class members in that the claims of all class members for each of the claims herein can be established with common proof. Additionally, a class action would be "superior to other available methods for the fair and efficient adjudication of the controversy," as set forth in Rule 23(b)(3) of the Federal Rules of Civil Procedure in that (1) Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings; (2) Plaintiffs are not aware of any other lawsuits against Defendants commenced by or on behalf of members of the Class; and (3) because the disputed advertisements are common to all Class members and because resolution of the claims of Plaintiffs will

1 resolve the claims of the remaining Class, certification does not pose any
2 manageability problems.

3 26. The claims of Plaintiffs are typical of the claims of the members of the
4 Stemulite Class. Plaintiffs and all members of the Stemulite Class have been similarly
5 affected by Defendants' common course of conduct since they all relied on
6 Defendants' representations concerning Stemulite and purchased the products based
7 on those representations.

8 27. Plaintiffs will fairly and adequately represent and protect the interests of
9 the Stemulite Class. Plaintiffs have retained counsel with substantial experience in
10 handling complex class action litigation. Plaintiffs and their counsel are committed to
11 vigorously prosecuting this action on behalf of the Stemulite Class and have the
12 financial resources to do so.

13 28. Plaintiffs and the members of the Stemulite Class suffered, and will
14 continue to suffer, harm as a result of Defendants' unlawful and wrongful conduct. A
15 class action is superior to other available methods for the fair and efficient
16 adjudication of the present controversy. Individual joinder of all members of the class
17 is impracticable. Even if individual class members had the resources to pursue
18 individual litigation, it would be unduly burdensome to the courts in which the
19 individual litigation would proceed. Individual litigation magnifies the delay and
20 expense to all parties in the court system of resolving the controversies engendered by
21 Defendants' common course of conduct. The class action device allows a single court
22 to provide the benefits of unitary adjudication, judicial economy, and the fair and
23 efficient handling of all class members' claims in a single forum. The conduct of this
24 action as a class action conserves the resources of the parties and of the judicial
25 system and protects the rights of the class members. Furthermore, for many, if not
26 most, a class action is the only feasible mechanism that allows an opportunity for legal
27 redress and justice.

28 29. Adjudication of individual class members' claims with respect to the

Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT

(By Plaintiffs and On Behalf of the Stemulite Class)

30. Plaintiffs incorporate by this reference the preceding allegations as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

31. As alleged hereinabove, Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact and have lost money or property as a result of Defendants' actions as set forth herein. Specifically:

- a. Prior to the filing of this action, Plaintiffs purchased Stemulite products for their own personal use. In so doing, Plaintiffs believed and relied specifically on the representations contained in the marketing materials for the products, which they had viewed on television, on the Internet, and in the premises where they purchased the product, and which explicitly state that Stemulite will cause increased strength, muscle, energy, REM sleep, endurance, well being, recovery time, and weight loss. Plaintiffs have used Stemulite, but the products have not worked as advertised. Specifically, they have not experienced weight loss without the need for change in diet and exercise routines, Stemulite did not automatically reduce their caloric intake and cause weight loss, and Stemulite did not make them appear thinner. Also, Plaintiffs did not experience deep REM sleep, increased muscle gain and endurance, or increased wellness and energy. Plaintiffs

1 thus have suffered significant injury and damage because they
2 purchased a product based on false advertising and because the
3 product has not worked as advertised.

4 32. Prior to filing this Complaint, Plaintiffs' counsel mailed to Defendant and
5 its counsel, by certified mail, return receipt requested, the written notice required by
6 Civil Code Section 1783(a), regarding Stemulite. A true and correct copy of the
7 notice is attached to this Complaint as Exhibit K.

8 33. This cause of action is brought on behalf of all people of the State of
9 California in accordance with the provisions of the California Legal Remedies Act
10 (California Civil Code section 1770). Plaintiffs and members of the Stemulite Class
11 have lost money or property as a result of Defendants' actions as set forth herein.

12 34. Defendants' wrongful business practices constituted, and constitute, a
13 continuing course of conduct of violation of the California Legal Remedies Act since
14 Defendants are still representing that their products have characteristics and abilities
15 which are false and misleading.

16 35. Pursuant to section 1770 of the California Civil Code, Plaintiffs and the
17 Stemulite Class seek an order of this court enjoining Defendants from continuing to
18 engage in unlawful, unfair, or deceptive business practices and any other act
19 prohibited by law, including those set forth in the complaint. Plaintiffs and the
20 Stemulite Class seek an order requiring Defendants to make full restitution of all
21 moneys it wrongfully obtained from Plaintiffs and the Stemulite Class. Plaintiffs and
22 the Class also seek Punitive damages since Defendants were put on notice of its
23 violation of the California Legal Remedies Act and took no remedial actions.

24 **SECOND CAUSE OF ACTION**

25 **UNJUST ENRICHMENT**

26 **(By Plaintiffs and On Behalf of the Stemulite Class)**

27 36. Plaintiffs incorporate by this reference the preceding allegations as if
28 fully set forth herein and, to the extent necessary, plead this cause of action in the

1 alternative.

2 37. Through the conduct described herein, Defendants have received money
3 belonging to Plaintiffs and the Stemulite Class through the sale of Stemulite.

4 38. Defendants have reaped substantial profit by misrepresenting and/or
5 concealing the facts regarding their products. Defendants have marketed Stemulite as
6 having certain properties when they in fact did not and do not have such properties.
7 Ultimately, this has resulted in Defendants' wrongful receipt of profits and injury to
8 Plaintiffs and the Stemulite Class. Defendants have benefited from the receipt of such
9 money that they would not have received but for their misrepresentation and/or
10 concealment.

11 39. As a direct and proximate result of Defendants' misconduct as set forth
12 herein, Defendants have been unjustly enriched.

13 40. Under principles of equity and good conscience, Defendants should not
14 be permitted to keep the money belonging to Plaintiffs and the Stemulite Class that
15 Defendants have unjustly received as a result of their actions.

16 **THIRD CAUSE OF ACTION**

17 **FRAUD**

18 **(By Plaintiffs and On Behalf of the Stemulite Class)**

19 41. Plaintiffs incorporate by this reference the preceding allegations as if
20 fully set forth herein and, to the extent necessary, pleads this cause of action in the
21 alternative.

22 42. As alleged herein, Defendants have made representations to Plaintiffs
23 concerning Stemulite as follows:

- 24 a. Defendants represented to Plaintiffs and to the members of the
25 Stemulite Class, through the representations contained in the
26 marketing materials for Stemulite, which they had viewed on
27 television, on the Internet, and in the premises of where they
28 purchased the product, that a consumer need not change his or her

1 diet and exercise routine in order to lose weight with the product,
2 that Stemulite automatically reduces caloric intake and causes
3 weight loss accordingly, and that Stemulite will cause increased
4 strength, muscle, energy, REM sleep, endurance, well being,
5 recovery time, and weight loss.

6 43. In making these specific representations to Plaintiffs, Defendants acted
7 fraudulently and deceitfully with knowledge that Plaintiffs and the Stemulite Class
8 would rely on their actions and omissions. Defendants made the aforesaid material
9 representations and/or concealed material facts to induce Plaintiffs and the Stemulite
10 Class to act in reliance on the misrepresentations and statements.

11 44. As detailed herein, Plaintiffs expressly relied on the representations of
12 Defendants concerning the properties of the Stemulite, and had no reason to doubt or
13 to dispute those representations. Plaintiffs and the Stemulite Class at all times are
14 presumed to have reasonably and justifiably relied both directly and indirectly on the
15 actions and representations of Defendants.

16 45. As a direct and proximate result of Defendants' fraud, Plaintiffs and the
17 Stemulite Class have suffered actual damages in an amount not presently known, but
18 which will be shown by proof at time of trial, including incidental and consequential
19 damages, interest, and reasonable attorneys' fees.

20 46. Plaintiffs are informed and believe and thereon allege that Defendants
21 undertook the aforesaid illegal acts intentionally or with conscious disregard of the
22 rights of Plaintiffs and the Stemulite Class, and did so with fraud, oppression, and
23 malice. Therefore, Plaintiffs and the Stemulite Class are also entitled to punitive
24 damages against Defendants in an amount that will be shown by proof at trial.

25 ///

26 ///

27 ///

28 ///

FOURTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE
SECTIONS 17200 ET SEQ.

(By Plaintiffs and On Behalf of the Stemulite Class)

47. Plaintiffs incorporate by this reference the preceding allegations as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

48. As alleged hereinabove, Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact and have lost money or property as a result of Defendants' actions as set forth herein. Specifically:

- a. Prior to the filing of this action, Plaintiffs purchased Stemulite products for their own personal use. In so doing, Plaintiffs believed and relied specifically on the representations contained in the marketing materials for the products, which they had viewed on television, on the Internet, and in the premises of where they purchased the product, and which explicitly state that Stemulite will cause increased strength, muscle, energy, REM sleep, endurance, well being, recovery time, and weight loss. Plaintiffs have used Stemulite, but the products have not worked as advertised. Specifically, they have not experienced weight loss without the need for change in diet and exercise routines, Stemulite did not automatically reduce their caloric intake and cause weight loss, and Stemulite did not make them appear thinner. Also, Plaintiffs did not experience deep REM sleep, increased muscle gain and endurance, or increased wellness and energy. Plaintiffs thus have suffered significant injury and damage because they purchased a product based on false advertising and because the product has not worked as advertised.

1 49. Defendants' actions as alleged in this complaint constitute an unfair or
2 deceptive business practice within the meaning of California Business and Professions
3 Code section 17200 in that Defendants' actions are unfair, unlawful, and fraudulent,
4 and because Defendants have made unfair, deceptive, untrue or misleading statements
5 in advertising media, including the Internet, within the meaning of California Business
6 and Professions Code sections 17500, et seq.

7 50. Defendants' business practices, as alleged herein, are unfair because they
8 offend established public policy and/or are immoral, unethical, oppressive,
9 unscrupulous and/or substantially injurious to consumers in that consumers are
10 potentially misled by the claims made with respect to the Stemulite products.

11 51. Defendants' business practices as alleged herein are unlawful because the
12 conduct constitutes false marketing and advertising and other causes of action alleged
13 herein.

14 52. Defendants' business practices as alleged herein are fraudulent because
15 they are likely to deceive customers into believing that the Stemulite products have
16 properties that they do not have.

17 53. Defendants' wrongful business practices constituted, and constitute, a
18 continuing course of conduct of unfair competition since Defendants are marketing
19 and selling their products in a manner likely to deceive the public.

20 54. Defendants' wrongful business practices have caused injury to Plaintiffs
21 and the Stemulite Class.

22 55. Pursuant to section 17203 of the California Business and Professions
23 Code, Plaintiffs and the Stemulite Class seek an order of this court enjoining
24 Defendants from continuing to engage in unlawful, unfair, or deceptive business
25 practices and any other act prohibited by law, including those set forth in the
26 complaint. Plaintiffs and the Stemulite Class also seek an order requiring Defendants
27 to make full restitution of all moneys it wrongfully obtained from Plaintiffs and the
28 Stemulite Class.

**FIFTH CAUSE OF ACTION
BREACH OF WARRANTY**

(By Plaintiffs and On Behalf of the Stemulite Class)

56. Plaintiffs incorporate by this reference the preceding allegations as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

57. As alleged hereinabove, Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact and have lost money or property as a result of Defendants' actions as set forth herein. Specifically:

- a. Prior to the filing of this action, Plaintiffs purchased Stemulite products for their own personal use. In so doing, Plaintiffs believed and relied specifically on the representations contained in the marketing materials for the products, which they had viewed on television, on the Internet, and in the premises of where they purchased the product, and which explicitly state that Stemulite will cause increased strength, muscle, energy, REM sleep, endurance, well being, recovery time, and weight loss. Plaintiffs have used Stemulite, but the products have not worked as advertised. Specifically, they have not experienced weight loss without the need for change in diet and exercise routines, Stemulite did not automatically reduce their caloric intake and cause weight loss, and Stemulite did not make them appear thinner. Also, Plaintiffs did not experience deep REM sleep, increased muscle gain and endurance, or increased wellness and energy. Plaintiffs thus have suffered significant injury and damage because they purchased a product based on false advertising and because the product has not worked as advertised.

58. Defendants have made express affirmations of fact as set forth above.

1 These affirmations are false.

2 59. Plaintiffs relied on Defendants' false affirmation, as set forth herein.

3 60. Defendants' false express affirmations have caused injury to Plaintiffs
4 and the Stemulite Class.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiffs and members of the Stemulite Class request that the Court
7 enter an order or judgment against Defendants as follows:

- 8 1. Certification of the proposed Stemulite Class and notice thereto to be
9 paid by Defendants;
- 10 2. Adjudge and decree that Defendants have engaged in the conduct alleged
11 herein;
- 12 3. For restitution and disgorgement on certain causes of action;
- 13 4. For an injunction ordering Defendants to cease and desist from engaging
14 in the unfair, unlawful, and/or fraudulent practices alleged in the
15 Complaint;
- 16 5. For compensatory and general damages according to proof on certain
17 causes of action;
- 18 6. For both pre and post-judgment interest at the maximum allowable rate
19 on any amounts awarded;
- 20 7. Costs of the proceedings herein;
- 21 8. Reasonable attorneys' fees as allowed by statute; and
- 22 9. Any and all such other and further relief that this Court may deem just
23 and proper, including but not limited to punitive damages.

24 DATED: December 23, 2009

THE PHAN LAW GROUP
A Professional Law Corporation

25
26 By: Luan K. Phan / K1
27 Luan K. Phan
28 Attorneys for Plaintiffs and the Stemulite
Class

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil procedure Section 38(b), Plaintiffs and the Stemulite Class demand a trial by jury on all issues so triable.

DATED: December 23, 2009

THE PHAN LAW GROUP
A Professional Law Corporation

By: Luan K. Phan / US
Luan K. Phan
Attorneys for Plaintiffs and the Stemulite
Class

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> Michael Campos, Thomas Hess, and Sara Jordan, individually and on behalf of others similarly situated	DEFENDANTS METABOLIC RESEARCH, INC., a Nevada domestic corporation; and DOE DEFENDANTS 1-#0, Inclusive
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Luan K. Phan (SBN 185985) The Phan Law Group, A Professional Law Corp.; ; PH: (310) 242-5600 6080 Center Drive, Suite 610, Los Angeles, CA 90045 (see Attachment)	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:40%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF DEF</td> <td style="width:40%; border: none;"></td> <td style="width:10%; border: none; text-align: center;">PTF DEF</td> </tr> <tr> <td style="border: none;"></td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF		PTF DEF		<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State	PTF DEF		PTF DEF														
	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4 <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ In Excess of \$100,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Violation of CA Consumers Legal Remedy Act; Violation of CA Business and Professions Code; Unjust Enrichment; Fraud; Breach of Warranty

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Thomas Hess - Riverside County Sara Jordan - Los Angeles County	Michael Campos - San Diego County, Southern District of California

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Metabolic Research, Inc. - Nevada, USA

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County (All Claims)	San Diego County (All Claims)

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Luan H. Phan / KS Date 12/24/09

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Attachment to Section I(b) – Plaintiffs’ Attorneys:

Scott J. Ferrell (SBN 202091)
NEWPORT TRIAL GROUP
610 Newport Center Drive – Suite 700
Newport Beach, CA 92660
Telephone: (949) 706-6464
Facsimile: (949) 706-6469
Email: sferrell@trialnewport.com

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Valerie Baker Fairbank and the assigned discovery Magistrate Judge is David T. Bristow.

The case number on all documents filed with the Court should read as follows:

CV09- 9445 VBF (DTBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).


Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

LUAN K. PHAN (SBN 185985)
 THE PHAN LAW GROUP, APC 
 6080 Center Dr., Suite 610 Los Angeles, CA 90045;
 SCOTT J. FERRELL (SBN 202091)
 NEWPORT TRIAL GROUP; 610 Newport Center
 Dr, Ste. 700; Newport Bch., CA 92660

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

MICHAEL CAMPOS, THOMAS HESS, and SARA
 JORDAN, individually and on behalf of others
 similarly situated;

PLAINTIFF(S)


v.

METABOLIC RESEARCH, INC., a Nevada domestic
 corporation; and DOE DEFENDANTS 1-10, Inclusive,

DEFENDANT(S).

CASE NUMBER

CV 09-9445

 VBF (DTBX)

SUMMONS

TO: DEFENDANT(S): METABOLIC RESEARCH, INC., a Nevada domestic corporation;
and DOE DEFENDANTS 1-10, Inclusive.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Luan K. Phan, whose address is The Phan Law Group, APC; 6080 Center Dr., Suite 610 Los Angeles, CA 90045. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 23 DEC 2009

By: SNEA BOURGEOIS

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].